

REMARKS:

This is a full and complete response to the Office action dated August 5, 2009. Favorable reconsideration of the claims is respectfully requested.

REGARDING THE CLAIMS:

Claims 1, 6, 8-10, and 13 are pending in the application. Claims 2 and 3 are canceled with this reply. No new matter has been added.

PRIORITY

Applicants acknowledge with gratitude Examiner's indication that priority is granted to June 30, 2000, due to Applicant's submission of German priority document DE 100 30 976.2, and further granted to the filing date of the 09/347,531 application, namely July 6, 1999.

CLAIM OBJECTIONS

Claims 2 and 3 are objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to limit the subject matter of the previous claim. While not conceding to the assertions in the Office action, in order to advance prosecution, Applicants have canceled claims 2 and 3. Accordingly the objections are now rendered inapplicable.

REJECTION UNDER 35 U.S.C. § 112:

Claims 9-10 stand rejected under 35 USC §112, first paragraph, for failing to comply with the written description requirement. Applicants respectfully traverse this rejection.

Examiner argues that claim 9 is indefinite due to the recitation of the term "isolated" and that it is unclear how this is meant to be interpreted in the context of how an organism can comprise an "isolated" nucleic acid. Applicants submit that the term "isolated" is well known and often used in the art and would easily be understood by those of ordinary skill in the art. Furthermore, such would be understood in view of the

present specification. For example on p. 3 of the Application, lines 10-15, it is recited “introducing, into an organism, at least one isolated nucleic acid sequence.” Thus an isolated nucleic acid can be introduced into an organism. Furthermore, isolating is discussed also in the Examples of the application including Example 6, on p. 27. Moreover, the term is used numerous times in the example claims of USPTO Written Description Training Materials issued March 25, 2008. For example page 13 in the Manual, namely Example 4A, has an example Claim 1 which recites “an isolated DNA.” Also page 15 includes two examples reciting “isolated nucleic acid.” Accordingly, Applicants submit that the term would be well known to those of ordinary skill in the art. Accordingly, claim 9 is not at all indefinite, and it is respectfully requested the above mentioned rejection be withdrawn.

REJECTION UNDER 35 U.S.C. § 102 AND §103 REJECTIONS:

Claims 1-3, 8-9, and 13 stand rejected under 35 USC §102(a) as being anticipated by **Girke et al.**, Plant J., July 27 1998, Vol. 15 (“**Girke**”). Applicants respectfully traverse this rejection. Claims 6 and 10 stand rejected under 35 USC §103(a) as being unpatentable over **Girke** in view of Napier et al., Curr. Opin. Plant Bio. Apr., 1999 2:123-127 (“**Napier**”). Applicants respectfully traverse these rejections.

Applicants note that a Declaration under 37 CFR §1.131 was filed on February 19, 2008 which included facts establishing that the presently claimed invention was reduced to practice prior to July 27, 1998, thus antedating the Girke reference. *MPEP* §715. Therefore, the rejections 35 USC §102 and §103 which both rely on the Girke reference are consequently moot. In view of this, Applicants respectfully request the above mentioned rejections be withdrawn.

In view of the comments above, it is respectfully requested that the rejections be withdrawn and a Notice of Allowance issue with respect to the currently pending claims.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: BASF 0093/000032.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner may directly contact the undersigned by phone to further the discussion.

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Respectfully submitted,

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